



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 09 2013** Office: NATIONAL BENEFITS CENTER File: [REDACTED]

IN RE: Applicant: [REDACTED]

PETITION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

The applicant is a native and citizen of Singapore, who is seeking to adjust her status to that of lawful permanent resident under section 13 of the Act of 1957 (“Section 13”), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The director denied the application for adjustment of status after determining that the applicant had not established: that compelling reasons prevent her return to Singapore; that her adjustment of status is in the national interest of the United States; and that the applicant filed for adjustment of status while she was still maintaining diplomatic status. The AAO also noted that the U.S. Department of State has recommended that the applicant’s adjustment application be denied because the applicant had not presented compelling reasons why she cannot return to Singapore. *Decision of the Director*, dated January 13, 2013.

On appeal, counsel provided a list of reasons why the applicant does not want to return to Singapore, to wit; the applicant has a developmentally disabled U.S. citizen child, that her child requires “24/7” care and supervision; that the government of Singapore “is quite insensitive to handicapped people,” that there is no state-sponsored education programs for people like her child; that her child is receiving education and training, which is not available in Singapore; and that her child requires medical ongoing attention and supervision that would be “completely unavailable in Singapore.” The applicant considers these compelling reasons why she cannot return to Singapore

Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, provides, in pertinent part:

(a) Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the [Department of Homeland Security] that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien’s immediate family and that adjustment of the alien’s status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the [Department of Homeland Security], in its discretion, may record the alien’s lawful admission for permanent

residence as of the date [on which] the order of the [Department of Homeland Security] approving the application for adjustment of status is made.

8 U.S.C. § 1255b(b).

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under Section 13 is limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government that accredited the applicant, and that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under Section 13.

In addition, an applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13; thus, his or her status must be terminated prior to the date on which the adjustment application is filed. Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Therefore, the authority to determine the date of termination of status under section 101(a)(15)(A)(ii) of the Act rests exclusively with the State Department.

Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) or 101(a)(15)(G)(i) or (ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(i) of the Act rests exclusively with the State Department. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. However, denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

In this matter, the record reflects that the applicant was admitted in A-2 nonimmigrant status and served as a diplomat for the government of Singapore from October 1990 until her voluntary separation in December 2003. Counsel indicated on appeal that the applicant separated from the Singapore Consulate in October 2003, that she tendered her resignation, which was completed at the end of November 2003. At her adjustment interview, the applicant stated that the U.S. Department of State was notified of her termination in December 2003. The director noted in his decision that the applicant maintained her diplomatic status until January 15, 2004, the date on which the U.S. Department of State was notified of her termination of service. Therefore, it appears from the record that the applicant maintained legal status in the United States under section 101(a)(15)(A)(ii) of the Act through January 15, 2004. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on August 14, 2003. Thus, when the applicant filed her Form I-485, on August 14, 2003, she was not eligible to apply for section 13 adjustment of status. Accordingly, the AAO finds that the director properly determined that the applicant was

not eligible to apply for adjustment of status pursuant to section 13 of the Act on August 14, 2003.

Accordingly, the AAO determines that the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(ii) of the Act, was maintaining that status at the time of her application for adjustment on August 14, 2003, and therefore was not eligible to apply for adjustment under Section 13 at the time of the filing. As the applicant was not statutorily eligible to apply for adjustment of status under section 13 of the Act, the issues of whether the applicant has established compelling reasons that prevent her return to Singapore and whether her adjustment is in the national interest of the United States will not be addressed.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. The applicant has failed to meet that burden.

ORDER: The appeal is dismissed. The application remains denied.